



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by September 1, 2017. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

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### PROPOSED

The Committee proposes a new jury instruction, M Crim JI 12.9, for a “§ 8 defense” to possession of marijuana charges in MCL 333.26428, pursuant to *People v Hartwick*, 498 Mich 192 (2015). The instruction is entirely new.

#### **[NEW] M Crim JI 12.9 Medical Marijuana Affirmative Defense**

(1) The defendant says that [he / she] is not guilty since [his / her] possession of marijuana was legal because it was permitted for medical purposes. The burden is on the defendant to show that [he / she] possessed marijuana for medical purposes.

(2) Before considering the medical marijuana defense, you must be convinced beyond a reasonable doubt that the defendant committed the [crime / crimes] charged by the prosecutor. If you are not, your verdict should simply be not guilty of [that / those] offense[s]. If you are convinced that the defendant committed an offense, you should consider the defendant’s defense that [he / she] possessed the marijuana for medical purposes.

(3) In order to establish that [his / her] possession of marijuana was legal, the defendant must prove three elements by a preponderance of the evidence. A preponderance of the evidence means that [he / she] must prove that it is more likely than not that each of the elements is true.

(4) First, that a physician provided a professional opinion stating that the defendant is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate a serious or debilitating medical condition or the symptoms of a serious or debilitating medical condition.

The term “therapeutic benefit” means tending to cure or restore to health.

The term “palliative benefit” means moderating pain or symptoms by making them easier to bear, without necessarily curing the underlying medical condition.

In order to prove that a physician provided a professional opinion, the defendant must establish both of the following conditions:

- (a) that [he / she] had a bona fide physician-patient relationship with the physician who provided the professional opinion; and

- (b) that the opinion was made after a full assessment of the defendant's medical history and current medical condition.

A bona fide relationship means that there was an actual and ongoing relationship between defendant and the physician when the opinion was provided.

(5) Second, that the defendant [and (his / her) primary caregiver] possessed no more marijuana than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the defendant's medical condition or symptoms.

(6) Third, that the defendant [and (his / her) primary caregiver] [was / were] engaged in the [acquisition / possession / cultivation / manufacture / use / delivery / transfer / transportation] of marijuana to treat or alleviate the defendant's medical condition.

(7) You should consider these elements separately. If you find that the defendant has proved all three of these elements by a preponderance of the evidence, then you must find [him / her] not guilty because [his / her] possession was permitted for medical purposes. If the defendant has failed to prove any or all of these elements, [he / she] was not legally permitted to possess marijuana for medical purposes.